C182-2-2A

India
An Undiscovered Market

Christmas Bookstore Business: A Mixed Bag
The Rush for Magic Johnson Books • Book Sales Still Spotty
A Crop of New Children's Authors & Illustrators

Publishers Weekly®

A CAHNERS/R.R. BOWKER PUBLICATION THE INTERNATIONAL NEWS MAGAZINE OF BOOK PUBLISHING DECEMBER 20, 1991 $2.50

How's this for openers?

DOUBLE CROSS ♥ SAM GIANCANA AND CHUCK GIANCANA

"Don't ever forget that I'm the Justice of the Peace...if they do what we want, we'll take care of them. If they don't, well, we'll take care of that, too."

FRENCH SILK ♥ SANDRA BROWN

Reverend Jackson Wilde had been shot in the head, the heart and the testicles. Right off, Cassidy figured that was a significant clue.

ON MY HONOR, I WILL ♥ RANDY PENNINGTON & MARC BOCKMON

What would happen if the Boy Scout Oath were applied to American business? It would change the way we do business from the inside out—not just the outside in!

GOOD DOGS, GREAT OWNERS ♥ BRIAN KILCOMMONS & PAUL KUNKEL

The easy part is training the dog, the hard part is training the owner.

BREAKING WITH TRADITION ♥ FELICE N. SCHWARTZ

We need a revolution of the same magnitude as the upheaval that freed women from the confines of the home. This one has to start not with women, but with employers.

THE CLUB RULES ♥ PAUL ROSENFIELD

There are 200 people floating around the top of Hollywood. They make money together, and sometimes they make magic—and always they protect each other. They're the club...

DEAD ON DELIVERY ♥ ROBERT M. STUTT

They should never have let this meeting between DEA agent
Blood still trickled from Hatcher's right eye.

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Wright Bio Ruling Eases Fair Use Restrictions

Despite a recent appeals court decision affirming that the use of unpublished materials in a 1988 biography of Richard Wright is within the fair use guidelines, critics of the current fair use interpretations continue to call for Congressional action to broaden legal access by biographers and scholars to unpublished material.

Margaret Walker's *Richard Wright: Daemonic Genius*, a biography of the expatriate novelist and essayist, was copublished by Warner Books and Amistad Press. The ruling in November by the U.S. Court of Appeals in New York affirmed an earlier lower court judgment in favor of the "sparing" use of portions of Wright's unpublished letters sent to Walker in the 1930s, as well as journal entries and an unpublished essay. The suit was brought by Wright's widow Ellen Wright. He died in 1960.

Margaret Walker, author of the novel *Jubilee*, who worked on the biography for 15 years, said, "I am elated over the outcome of this suit. We revised the manuscript five times over a period of five years and much of the revision was to prevent copyright infringement."

The court emphasized that Walker's book satisfied three of the four determining factors for fair use, ruling that only one factor, the unpublished nature of the material, was an obstacle to fair use claims—"but not an insurmountable one." The other three factors are: what the material is being used for, the amount of material used, and the effect of the use on the market value of the allegedly infringed material.

The court said that while previous rulings on fair use of unpublished material "normally" gave precedence to the author's rights to first publication over any claims of fair use, those rulings have never "erected a per se rule" prohibiting all use of unpublished material.

"The fair use test remains a totality inquiry, tailored to the particular facts of each case," said the court. "This is not a reprise of *Salinger* and *New Era I*. The biography's use of Wright's expressive works is modest and serves to illustrate factual points or to establish Dr. Walker's relationship with the author."

Many in the industry worry that previous rulings have severely narrowed the scope of fair use guidelines.

Mark Fowler of Satterlee, Stephens Burke & Burke, one of the attorneys for Warner Books/Amistad Press and Margaret Walker, said, "The decision goes some distance towards a balanced approach to the use of unpublished material. It clarifies that there is not total protection of unpublished material and that the door is open for the appropriate use of a meaningful proportion of the work in question. But there is still a lot of ambiguity on fair use and it would be useful for Congress to introduce legislation to fully clarify the issue."

PEN legal advisor Leon Friedman, who filed a friend-of-the-court brief for PEN American Center urging less restriction on unpublished material, said the ruling "helps a little, but we still need help from Congress with legislation. Whether or not material is unpublished should be considered as an element; it shouldn't be conclusive."

Andres Valdespino of Walsh and Valdespino, attorney for Ellen Wright, said Mrs. Wright "had no present plans" to appeal the judgment. "We are disappointed in the court's decision," Valdespino said, "but gratified by the court's analysis that unpublished works must be treated differently."

Valdespino pointed out that the court's action would dispel "a lot of the legal hysteria that has sprung up around this issue." He said that shortly after the *New Era* ruling "legal writers began to describe these rulings as a 'per se rule' prohibiting any use of unpublished material whatsoever. I only wish that were true—it would have made my life a lot easier. The appeals courts have always considered the four-prong analysis. I never argued that there was a per se rule and this decision emphasizes that." —C.R.

AAP Sales Report for October

Category	% change, Oct.	% change, YTD
Adult hardcover	-3.0	5.6
Adult paperback	-3.9	4.8
Juvenile hardcover	52.5	10.1
Juvenile paperback	11.6	18.2
Univ. pr. hardcover	38.6	8.4
Univ. pr. paperback	-4.8	10.8
Bibles, etc.	7.0	24.2
Mass market paperback	6.8	8.3
Book club	-3.7	4.1
Mail order	9.3	3.2
Sci-tech	25.7	1.4
College texts	36.3	-2.4
School texts	-8.1	2.9

**Percent changes measured against same time periods, 1990.*

Biography of the Biography

Margaret Walker's *Richard Wright: Daemonic Genius* was orginally acquired in 1974 for Howard University Press by Charles Harris, its director at the time. Now director and co-owner of Amistad Press, which copublished the biography with Warner Books, Harris has continued as Walker's editor over the course of 10 years of litigation, five manuscript revisions and several changes of publishing environment.

Harris said, "The book became the center of a complex combination of issues involving academic freedom and prior restraint" after it was announced for publication in 1979. He said Wright's widow began putting legal pressure on Howard University Press, asking to see Walker's entire manuscript, not just quoted passages from Wright's work. Although the press refused to allow Mrs. Wright to see the manuscript, Walker began the first of her five revisions, and the press turned to outside legal counsel to "make sure we dealt with the Wright estate properly."

Leaving the press in 1986, Harris founded Amistad, specializing in works by and about African Americans. By then, with complex legal questions surrounding the book, Howard was willing to let Walker follow Harris to Amistad Press. After a brief association with defunct Dodd, Mead, Harris entered a copublishing agreement with Warner Books in 1988, bringing the Wright biography along with him.

Harris believes that legislation clarifying fair use is necessary to protect "the dissemination of knowledge" and he praised his copublisher. "Warner Books has absorbed significant legal expenses," he said. "It says a lot about [president] Larry Kirshbaum and Warner Books counsel Carol Fein Ross. They knew a lawsuit was coming when they agreed to copublish this book."

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